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IN THE

Supreme Court of the United States

PAMELA CARVEL, as Executor of the Estate of Agnes Carvel

Petitioner,

V.

CARVEL FOUNDATION INC., a Company incorporated under the laws of the State of Florida,

Respondent.

THOMAS AND AGNES CARVEL FOUNDATION, Ancillary Administrator LEONARD M. ROSS,

Intervenors

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

PETITIONER'S REPLY BRIEF FOR WRIT OF CERTIORARI

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REPLY BRIEF

The intervenors failed to address the questions presented (Petitioner's Brief ("Brief"), page i). The new issues raised are standing and mootness; however they are based on incorrect facts and cases. The foreign-creditor claims asserted are alive and active in the High Court.

Intervenors made the same arguments since 1998 in New York Surrogate's Court to deny jurisdiction and standing (Brief, IV, page 21-24). Petitioner as executor in England and ancillary administrator in Delaware was not faced with a choice of courts --- the only court available was/is federal district court.

SUBSEQUENT EVENTS

"This application based on Constitutional questions, deals only with the probate exception to subject matter jurisdiction asserted by the lowers courts. Continuing events in the Estate remain on-going subjects of criminal investigations against the foundation usurpers ("intervenors"), as do Pamela Carvel's efforts, and appeals, on a *pro se* basis against the multi-million dollar litigation machine funded by the Carvels' restricted charitable gifts" (Brief, page 8).

The foundation usurpers hired about 10 solicitors and spent over $1 million of restricted Carvel donations to prevent Pamela Carvel from asserting the intentions of Agnes Carvel by replacing Pamela on June 11, 2007 with the foundation usurper's paid solicitor as "judicial trustee". No fiduciary represents the rights of named beneficiaries or creditors of the

Estate, only the foundation usurpers. Human rights violations are asserted in England.

The High Court order called for resubmission, on October 1, 2007, of existing claims and Pamela's accounting. Contrary to the intervenors statements, Pamela remains the accounting executor and the claims remain actively asserted.

There was never any evidentiary "finding" of fraud against Pamela Carvel in any jurisdiction. The assertions against Pamela Carvel (appearing *pro se*) are the words crafted by the foundation usurpers to be incorporated into judicial insinuations as retaliation to discredit Pamela for assisting law enforcement.

A finding of "fraud" in London required a full jury trial, which did not happen because the foundation usurpers withdrew their claim of fraud, and also withdrew their claim to be named sole beneficiary of the Estate. The statements speculating and inferring fraud, in decisions were directly hammered into the decision by the foundation usurpers' lawyers who scripted the documents. The words used by Westchester Surrogate's Emanuelli and Scarpino (who are suspected of collusion in bribery by the foundation usurpers) were expressly recited as directed by the foundation usurpers in their papers.

By contrast, Pamela assisted the F.B.I. and New York Attorney General in four felony convictions and the forced ouster of two foundation fraudsters.

INTERVENORS

The intervenors caused 18 years of wasting of Carvel asset to perpetuate their lawyer annuity that has made these lawyers millionaires (Brief pages 6,22) while every penny of $300 million of the Carvels' 70 years lifetime work disappeared into the hands of strangers without benefit to legitimate charity or to the Carvels as sole rightful owners.

As sole adjudicated Member of the Thomas and Agnes Carvel Foundation, Pamela Carvel denounces the Brief submitted by Orrick as not being by the legitimate Foundation but submitted by attorneys for the individuals who through forgery usurped the Foundation's identity for illicit purposes and personal profit (Brief page 5-6).

Pamela Carvel has petitioned the New York Attorney General to dissolve this illegitimate entity for abusing the Carvels' good name and restricted charitable gifts, and tax fraud. That matter is pending in U.S. District Court for New York Northern District (07-cv-01034-LEK-RFT).

Pamela Carvel has just been advised that it is well settled by the Appellate Courts of New York that all matters are stayed upon the death of a party and any determination rendered without substitution are generally deemed a nullity (*Weber v. Bellinger*, 124 AD2d 1009; *Matter of Einstoss*, 26 N.Y.2d 181, 187, 189, 309 N.Y.S.2d 184, 257 N.H.2d 637[1970]; *Meehan v. Washington*, 242 A.D.2d 286, 287, 660 N.Y.S.2d 737 [1997]).

The lack of proper substitution of a party in an action renders all subsequent orders null and void as

the court lacks jurisdiction (*Bossert v. Ford Motor Co.* 140 AD2d 480, 528 N.Y.S.2d 592, 1988 N.Y. App.Div.; *Brown v. Konczeski,* 242 A.D.2d 847, 661 N.Y.S.2d 891, 1997 N.Y. App. Div.

In this case, Agnes Carvel's death was procured on August 4, 1998 from stress induced by the foundation usurper's extortion tactics by cutting off all money to 89-year-old Agnes, even after her doctor warned that such foundation-usurper tactics would be fatal. In Thomas Carvel's estate when all proceedings were required to be stayed, two Orders to Show Cause were initiated by Orrick on August 12, 1998 purporting to restrain funds belonging to Agnes, and on August 17, 1998 purporting to restrain real estate and assert the "Agreement" contract. These apparently illegal actions are the basis for the intervenors alleged interest.

Pamela Carvel knows, in fact, that there are numerous pending investigations by the U.S. Department of Justice concerning judicial corruption in New York and Westchester County where foundations usurpers apparently paid over $400,000 from the Bank they own to Surrogate Scarpino just prior to obtaining favorable decisions and just prior to the Surrogate ignoring $10 million in fraudulent conveyances. All the foundation usurpers' decisions obtained through bribery may be voided.

Pamela Carvel asserts that the intervenors are engaged in a pattern of criminal enterprises pursuant to 18 USC §241 (Conspiracy against rights), §242 (Deprivation of rights under color of law) and other Federal and state statutes for the protection of inalienable rights.

Pamela Carvel further asserts that the intervenors are engaged in obstruction of justice including, but not limited to, violations of 18 USC §1512 (Tampering with a witness, victim, or an informant) and §1513 (Retaliating against a witness, victim, or an informant); also to deprive the Carvels' of equal rights under the U.S. Constitution and 42 USC §1981 (Equal rights under the law), 42 USC §1982 (Property rights of citizens), and 42 USC §1985 (Conspiracy to interfere with civil rights).

Pamela has the right to seek redress of such abuses pursuant to state and federal laws, including 42 USC §1983 (Civil action for deprivation of rights), 42 USC §1986 (Action for neglect to prevent), and 42 USC §1988 (Proceedings in vindication of civil rights). All these violations are aggravated by the denial of equal indemnification and denial access to all state and federal courts to assert the claims for payment.

Since the abuse of charitable donations violates Thomas and Agnes Carvel's intent, and since the stated purpose of the removal of Pamela Carvel is not for any benefit to the Estate or charity, but to obstruct Pamela Carvel's assertion of rights in all courts, the "probate exception" becomes a weapon for persecution and deprivation.

STANDING

Not one citation by the intervenors supports their concept that existing debts incurred by a fiduciary-creditor are extinguished when the fiduciary is replaced. Much to the contrary, Westchester Surrogates Court directed legal fees be paid for

trials Pamela Carvel participated in as resigned executor of Thomas Carvel's estate, eight years after Pamela Carvel ceased acting as executor. That same decision declined jurisdiction over all other claims (June 30, 2003, Brief, page 21-22).

Arguments put forth by intervenors confuse citizen standing to sue under Article III of the *U.S. Constitution* with the legal standing of a creditor under the *Uniform Fraudulent Transfer Act* ("UFTA") and the *New York Debtor and Creditor Law*. District Court did not raise Article III objections to jurisdiction, but accepted diversity jurisdiction under 28 U.S.C. 1332 (App.5).

Clearly stated throughout Petitioner's Brief, the issue before the Court is one of a foreign creditor with claims incurred on behalf of the deceased and the Estate. The validity of itemized claims with backup were never addressed by any court where the intervenors instigated dismissal. Each court addressed perceived flaws only in the procedure used by a *pro se* litigant who is denied mandatory equal indemnification by those who seek to conceal a pattern of criminal activity against the Carvels and government.

"The "gist of the question of standing" is whether the party seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962)." *Flast v. Cohen*, 392 U.S. 83 (1968).

The Estate and the executor's claims against the Estate remain open and active. Pamela Carvel remains the accounting executor, and remains Delaware ancillary administrator. The same creditors' claims remain. The same parties are involved. The same question of asserting the claims in New York exists. It remains that violations of rights were made against Pamela, who remains fiduciary-creditor.

Even if all factors were not the same, it is relevant whether the District Court obstructed the fiduciary-creditor's guaranteed rights, thereby fostering or influencing subsequent events resulting in intervenors violations of the UFTA to defraud Pamela by fraudulent conveyance of over $10 million in property in December 2006, without court approval, without notice to the Estate, without notice to Pamela or other beneficiaries or creditors.

There remains "harm in fact" by intervenors and District Court, if Pamela Carvel is denied all forums to assert Carvel claims against Carvel funds, and then all funds disappear. A favorable decision would be likely if Pamela Carvel had equal professional representation before an objective federal court, given that all identical expenses by all fiduciaries adverse to Agnes Carvel have been paid in full from Agnes' funds, without court order, and without notice to the Estate, without notice to Pamela or other beneficiaries and creditors.

Under UFTA (in New York, *Debtor and Creditor Law*, Chapter 12) Pamela Carvel's standing remains as creditor of Agnes Carvel and the Estate for expenses incurred as a fiduciary, "whether or not the

right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." (*UFTA*, Sec.1(3))

A creditor is not required to obtain a judgment against the debtor-transferor or to have a matured claim in order to proceed under UFTA. *American Surety Co. v. Conner*, 251 N.Y. 1, 166 N.E. 783, 65 A.L.R. 244 (1929); 1 G. Glenn, *Fraudulent Conveyances and Preferences* 129 (Rev.ed. 1940).

In *Rogers v. Girard Trust Co.*, 158 F.2d 239, 242 (6th Cir. 1947), the court held that the federal court had diversity jurisdiction because an action for right to damages for fraud and wrongful performance of fiduciary duty is an *in personam* action to establish a personal right against a fiduciary and does not in any way affect possession of and control over the res by the Orphans Court.

"Although a prior federal court judgment on the issues of the date and method of valuation would be binding on the state court, the judgment, in itself, is not interference. *See* Markham, 326 U.S. at 494. The district court's conclusion to the contrary was erroneous. Thus, we hold that the probate exception to federal jurisdiction does not bar Plaintiff's request for a declaration of his rights" *Uzielli v. Frank; Cooper*, 137 Fed. Appx. 795; 2005 U.S. App.

Intervenors know it is false to represent that a former executor lacks standing to have administrative expenses paid. Two foundation usurpers, ousted by the New York Attorney General, continued to claim legal fees that were paid for ten

years after the usurpers ceased to act as executors. Intervenors opposed and lost their attempt to prevent payment of Pamela Carvel's legal fees as former executor in Thomas Carvel's estate for trials and lost their attempt to have all estate claims adjudicated in Westchester Surrogate's Court (June 30, 2003, Brief page 21-22).

CONTROVERSY

Not one issue before the Court is moot. Every citation by the intervenors is not relevant to the continuing claims of a foreign creditor, whether as a fiduciary or not. UFTA defines claim, creditor and debtor (*UFTA*, Sec.1(3),(4)). UFTA does not required a claim to be reduced to a judgment. The claims here involved remain active claims in the High Court of Justice in London.

"Justiciability is itself a concept of uncertain meaning and scope...it remains true that "[j]usticiability is ...not a legal concept with a fixed content or susceptible of scientific verification. Its utilization is the resultant of many subtle pressures" *Poe v. Ullman*, 367 U.S. 497, 508 (1961)." *Flast v. Cohen*, 392 U.S. 83 (1968).

A controversy as to the existence of a debt and lien on property to secure it, or other equitable right in property in the hands of an administrator or executor, may be adjudicated and determined by a court of equity without seizing or taking actual possession of the property on which the lien rests. *Wylie v. Coxe*, 15 How. 415; *McComb v. Frink*, 149 U.S. 629; *Canfield v. Canfield*, 56 C.C.A. 169; S.C., 118 Fed. Rep. 1; *Richardson v. Green*, 9 C.C.A. 565;

S.C., 61 Fed. Rep. 423; *Van Bokkelen v. Cook*, 5 Saw. 587; S.C., Fed. Cas. No. 16,831; *Snyder's Admr. v. McComb's Exr.*, 39 Fed. Rep. 292.

"[F]ederal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heirs' and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court." *Markham*, 326 U.S. at 494 (citing Waterman v. Canal-Louisiana Bank & Trust Co., 215 U.S. 33, 43 (1909)).

The federal court's jurisdiction also extends to situations where the district court's judgment will not interfere with the state court's possession of the probate property, except to the extent that the state court must abide by the judgment of the federal court regarding the right it adjudicated. *Markham v. Allen*, 326 U.S. 490, 494, 90 L. Ed. 256, 66 S. Ct. 296 (1946).

The Court clarified somewhat the meaning of the word "interfere," holding the mere fact that the state probate court—when ultimately distributing the estate—would be bound to recognize the rights adjudicated in the federal court would not constitute an interference with the state probate proceedings. *Markham*, 326 U.S. at 494.

The debt thus established, however, "must take its place and share of the estate as administered by the probate court; and it cannot be enforced by process directly against the property of the

decedent." *Byers v. McAuley*, 149 U.S. 608, 620 (1893). *Accord Waterman*, 215 U.S. at 44.

The circuit Court will confine its action to the determination, protection and enforecement of the equitable rights of the citizen of a different State than that of the administrator. *Byers v. McAuley*, 149 U.S. 608; *Sherman v. American Cong. Assn.*, 51 C.C.A. 329; S.C., 113 Fed. Rep. 609".

GRANT CERTIORARI

The issue presented is that of a foreign creditor's rights to assert a claim against the U.S. assets of a foreign estate. The greater underlying issue is the systematic denial of rights by Surrogate's Court to divert estate and trust assets to strangers; and the federal courts' culpability in defrauding the victims and the government by invoking the "probate exception" thereby denying every possible forum for equal treatment, redress and due process.

The "probate exception is one of the most mysterious and esoteric branches of the law of federal jurisdiction". *Dragan v. Miller*, 679 F.2d 712, 713 (7th Cir. 1982).

"[T]he contours of the exception are vague and indistinct." *Georges v. Glick*, 856 F.2d 971, 973 (7th Cir. 1988).

"Despite its long and undisputed viability, the probate exception is not easily applied to particular cases." *Rice v. Rice Foundation*, 610 F.2d 471, 475 (7th Cir. 1979).

The line of demarcation between jurisdiction of state and federal courts in probate matters is often difficult to draw. *Foster v. Carlin*, 200 F.2d 943, 948 (4th Cir. 1952)

As to jurisdiction in suits against executors, administrators, guardians and trustees, "not infrequently the results seem inconsistent and the language confusing." *Kittredge v. Stevens*, 126 F.2d 263, 265 (1st Cir. 1942).

Intervenors do not present any argument on any of Petitioner Brief's points for grant of Certiorari (7 points, pages 8-29) other than to say the lower court was correct. Not one citation of law refutes all the new citations presented by Petitioner contradicting District Court's application of the "probate exception" and demonstrating that the "probate exception" as applied violates fundamental rights when it denies access to federal court after access to state court has already been denied.

Surrogate's Court conveniently denied hearing "foreign" claims by asserting the limited jurisdiction of the New York ancillary administration. This same argument that denied standing in state court was then asserted by the intervenors to deny Pamela Carvel standing in District Court -- that is, to deny every possible court to Pamela Carvel to assert any claim as fiduciary-creditor.

State court cannot obstruct the rights of a citizen to assert guaranteed rights in a federal court (Fourteenth Amendment, *U.S. Constitution*).

The District Court admitted federal jurisdiction by diversity, but refused to exercise jurisdiction pursuant to the "probate exception" (App. 6).

The history of litigation in Surrogate's is full of decisions declining jurisdiction over foreign claims (even from other states) or denying standing of the foreign fiduciary as creditor (Brief IV).

Contrary to the citations used by intervenors, Pamela presents both diversity and federal questions, impacting on U.S. civil rights and international human rights. The probate exception returns widows and their advocates to the dark times when some persons were without all rights before state courts, and without any avenue of redress supported by federal courts. Equal treatment and equal access to justice guaranteed by U.S. laws is the strongest possible reason for granting certiorari on rejecting the "probate exception".

Respectfully submitted,

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